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## EVOLUTION OF EMINENT DOMAIN RULES THROUGH CASES DECIDED IN FRONT OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA

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**Abstract:** The topic of this Article will be an analysis of different decisions that the Supreme Court of the United States has decided. Considering the long history and great number of decisions that this Court has ruled, this paper will focus on the decisions regarding Eminent Domain (Expropriation). More precisely, we will focus on the cases that we consider to be the most important ones when it comes to this topic. By doing so, we will try to provide a thorough overview of how these decisions and the precedents they set changed the application of the rule on Eminent Domain in the United States through time. This overview will also show us how access to justice in questions of limiting private property through Eminent Domain changed and whether these decisions made justice more or less accessible.

**Keywords:** Eminent Domain; U.S. Supreme Court; Access to Justice; Expropriation; Court Decisions.

**Resumo:** O presente Artigo tem como objeto a análise de diferentes decisões emitidas pelo Supremo Tribunal dos Estados Unidos. Atendendo à longa história e ao grande número de decisões deste Tribunal, este estudo centrar-se-á nas decisões de expropriação. Incidirá, mais precisamente, nos casos considerados mais importantes neste domínio. Ao fazê-lo, procurará apresentar uma visão geral completa de como estas decisões e os precedentes que estabeleceram alteraram a aplicação da regra sobre o direito de expropriação nos Estados Unidos ao longo do tempo. Esta visão geral mostrará também como o acesso à justiça em questões relacionadas com a limitação da propriedade privada através do direito de expropriação mudou e se estas decisões tornaram a justiça mais ou menos acessível.

**Palavras-chave:** "Eminent Domain"; Supremo Tribunal dos EUA; Acesso à Justiça; Expropriação; Decisões Judiciais.

### 1. Introduction

Eminent Domain represents the limitation of ownership rights over a certain real estate that is conducted by the state through its representative organs by issuing an adequate legal act, in situations where there is a general or public interest that is more important than protection of the owner's private

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rights with an obligation to pay a just compensation to the owner of the property (Prca, 2020: 140). Eminent Domain is a term used by the legal system in the United States for what is called Expropriation in the continental legal systems. In this paper, the two terms will be used as synonyms as they represent the same legal institute with slight differences that are not of importance to this paper.<sup>2</sup>

For Expropriation to occur appropriately and completely according to the law, certain requirements need to be met. These requirements are the same in every country in their essence although some variations may exist. Three requirements need to be met cumulatively: there must be a formal decision from an appropriate state body, a public interest must be present that requires the taking of a particular land in order for it to be achieved and there must be an adequate and just compensation given to the owner of the real estate that is the object of Expropriation.

The country's obligation, according to which it must provide the owner with just compensation for the real estate, can be a reason why it does not want to use expropriation in the aforementioned way. However, the state still has a public interest it wants to fulfil and therefore still wants the benefits of expropriation. As an alternative to using expropriation, it turns toward other ways of fulfilling its general or public interest by limiting or taking a private ownership right without paying the just compensation that it would otherwise be obliged to do. As an example used in rendering this decision as to what can be considered as actions that constitute eminent domain, different government regulations can be considered, such as importing taxes or imposing zoning regulations that can lead to a decrease in the value of the property, also creating extremely noisy circumstances due to the building of a highway or preventing the owner to use the property according to the planned purpose at the time of the acquisition of the property (Nedzel, Black, 2007: 144). Usually, besides the situation where the government has taken the property physically, there is a taking when the government removes all economic or productive use from the land, with the exception that the public harm consists of something already illegal under property law or nuisance.<sup>3</sup>

The term used to describe the situation where the taking or limiting of ownership of the property right on the real estate happens but the country

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2. Besides the terms that will be used in this paper i.e. Eminent Domain and Expropriation, for this state action we can also use terms such as compulsory purchase, taking, or condemnation, depending on the state where the action occurs. See more: Expropriation vs. Eminent Domain. Available at: <https://goldsteinlawyers.ca/2022/02/11/expropriation-vs-eminent-domain/>.

3. *Lucas v. South Carolina Coastal Council*, of 29/6/1992, 505 U.S. 1003. In this decision, the Supreme Court rendered a decision in which it stated that there was a taking considering the facts of the case that were the following. The owner of the property bought the land for the purpose of building a family house which was allowed at the time of the acquisition of the land. However, a couple of years after the acquisition, the State imposed the rule that building family houses on that property was not possible due to possible erosion that is endangering the stability of that area of land. In the decision, the Court departed from the opinion that there is no taking if the legal act that is impacting the property right is imposed for the public good and decided that if the act leads to a complete loss of economic value of the property, such as in this case, that there is a taking that needs to lead to a just compensation.

in question does not invoke expropriation in order to avoid its obligation is called indirect expropriation or creeping expropriation. In those situations, the consequences of the actions are the same as in direct or legal expropriation, but without the formal act of the state and the compensation given to the owner. There is a slight difference between indirect expropriation and creeping expropriation, although the terms are sometimes used as synonyms (Rakić, 2012: 154). As that is not the main topic of this paper, the difference can be highlighted only briefly in this section. The main difference is that creeping expropriation defines a taking that is done through multiple acts by the state that limit the ownership right, and, individually, would not be enough to constitute expropriation. However, indirect expropriation can, in certain situations, be done with just one act of the country or state, that is enough to limit or to take away the property right on the real estate without directly invoking the expropriation rules to skip the part where the country is required to pay the just compensation.

Considering the importance of Expropriation and its regulation by law, as it represents a limitation of one of the crucial human rights recognized in different national and international legal documents, it needs to be done by the rule of law. This paper will consider some of the most important and most famous disputes that concern state actions that were not classified as expropriation but resulted in a limitation or taking of a property right on a real estate or in different factual situations in which some of the requirements needed for expropriation were not clearly applicable and, therefore, it resulted in a dispute that ended up in front of the U.S. Supreme Court. We believe the analysis of these cases to be extremely important because it shows us how diverse actions can lead to the same result and how the court reacted to them. The relevant cases concerning expropriation in front of the U.S. Supreme Court are numerous and can be found and analysed from different perspectives. This paper is going to focus on the most important ones. We chose this Court and its rulings as the focus of our paper because of its importance and general reputation in the United States but also outside the country's borders.

## **2. Legislation of eminent domain (expropriation)**

Expropriation represents an exception to a generally accepted and basic human right: the right to protection of property. This right has been defined in more detail in different international and national legal acts. For example, the Convention for the Protection of Human Rights and Fundamental Freedoms, more precisely, the First Protocol to this Convention.<sup>4</sup> In the first article of this Convention, it states that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to

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4. The First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4/11/1950.

secure the payment of taxes or other contributions or penalties". The text of the cited article shows us basically that although private property is a human right that is not to be tampered with, this prohibition in relation to third parties, and the individual right of every natural or legal entity can be limited in certain situations. Those situations must be provided by law and must be in accordance with the general interests or to secure the payment of taxes or other contributions or penalties.

This protection of the right to property is also guaranteed by most national modern constitutions.<sup>5</sup> For the topic of this paper, the most important national legislation is that of the United States which will be analysed here. At the Federal level, Eminent Domain is regulated by the Fifth Amendment to the Constitution of the United States of America. This means that the original text of the Constitution did not have a clause which regulated the question of lawful taking of a private property on real estate. Before the Fifth Amendment's Taking Clause there were few precedents related to the issue, and no states or the Federal Government had an obligation for compensation where and when takings occurred (Treanor, 1995: 785).<sup>6</sup> This Amendment states the following: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation". As we can see, this Amendment protects the private property of a person from arbitrary taking without a just compensation. This

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5. For example, the right to property is also guaranteed by the Constitution of the Republic of Serbia in Article 58. This article states that the right to property is guaranteed, but that it can be limited in certain situations which need to be in accordance with a law and in favor of a public interest and with a mandatory compensation that cannot be under the value that is set on the market. See: Constitution of the Republic of Serbia. *Official Harold* RS 98/2006 and 115/2021, ratified on 8/11/2006. Also, Croatian Constitution. *National Gazette*, 56/90, 135/97, 113/00, 124/00, 28/01, 41/01, 54/01, 76/10, 85/10, 05/14, ratified on 22/12/1990, in its Article 48 states that property rights exist and are to be protected and in Article 50 states that the Law, in favor of the interest of the Republic of Croatia can limit or take away the property right with compensation of market value and to achieve interests and security of the Republic, the nature, environment, and health of the people. Similarly, Basic Law for the Federal Republic of Germany. *Federal Law Gazette* 2024 I, n. 439, adopted on 8/5/1949, in its Article 13, titled *Property- Inheritance- Expropriation* states that 1. Property and the right to inheritance shall be guaranteed. The contents and the limits shall be defined by laws; 2. Property entails obligations. Its use shall also serve the public good; 3. Expropriation shall only be permissible for the public good. It may only be ordered by or under a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts. We can conclude that the basic principles and the rules of these constitutions that were taken as an example for the purpose of this paper are the same.

6. Treanor also states that only two relevant documents from the colonial area provide for "limited recognition of a right to compensation", a provision from the Massachusetts Body of Liberties signed on 10/12/1641 and the 1669 Fundamental Constitution of Carolina signed on 1/3/1669.

just compensation was defined by the U.S. Supreme Court as “the most probable price that a willing but unpressured buyer, fully knowledgeable of both property’s good and bad attributes, would pay”.<sup>7</sup> Today, all of the states also provide for protection that is recognized in the Fifth Amendment. This is due to the rule of the Fourteenth Amendment that states that “...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law...”.<sup>8</sup>

To sum up, although the property right is one of the most fundamental human rights in the modern world and is, as such, recognized and protected by both international and national rules of law, it is not unlimited and absolute. This individual right is limited by the right of a state to limit it to serve the public interest. Therefore, the existence of a public interest is one of the main prerequisites of a legal limitation of a property right. Public interest is a general requirement that is, usually defined very broadly in order to allow the state to react in different situations when it needs to fulfil its public interest, however, it should not be unlimited because it could allow for different kinds of abuse of the right to limit property rights (Hiber, Živković, 2024: 1019).<sup>9</sup> Moving on, the second requirement is that the limitation must be in accordance with the rule of law. This requirement is understandable considering that if we were to exclude this requirement, everyone would be able to limit this basic human right without any consequence. This is also important to keep in mind that in order for the limitation to be in accordance with the law, all of the steps and phases of this limitation must be present in an adequate law and must be followed without exception. When the property right that is being limited in order for the public interest to be fulfilled is the property right to real estate<sup>10</sup>, we are talking about the institute of expropriation. Also, there is no lawful expropriation without just compensation. These requirements are clear, and we could say that their application should be simple and without any uncertainties. However, we need to look at the application of these rules in order to have a clear picture as to which of these requirements are met and what happens if one or more of them are not met and how the Court decides in situations that are not straightforward. Therefore, we will be analysing the practice in front of the Supreme Court of the United States to see a clear picture as to how Eminent Domain is applied and how the Court, by doing so, shapes the institute of eminent domain and access to justice of parties possibly affected by such limitations of property rights.

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7. Fifth Amendment to the Constitution of the United States of America, ratified on 15/12/1719.

8. Fourteenth Amendment to the Constitution of the United States of America, ratified on 9/8/1868.

9. Sometimes, when the requirement of a public interest existing is not met, it can lead to different situations and also to situations where the private interest is the one that is being met, instead of a public one. See Boljanović, 2024: 49-67.

10. Usually, real estates are the objects that have the most importance and the greatest value that are relevant to the state and that can be used to fulfill the public interest that is set by the state.

### 3. Practice of the Supreme Court of the United States

During its practice, the Supreme Court had problems with decisions regarding the conditions of the application of the institute of eminent domain, which shaped and defined the rules for the application of eminent domain.<sup>11</sup> It needed to define what constitutes a taking, what is just compensation due for the taking, and how can public interest be defined (Nedzel, Black, 2007: 143). Each of the cases that were selected as a topic of this paper will be used to show how a crucial requirement for the implementation of Eminent Domain is amended after the ruling from these cases which shows how understanding of access to justice changed together with these decisions.

#### 3.1 Pennsylvania Coal v. Mahon

When considering the Taking clause, which represents the requirement that private property on real estate is taken or limited, and its meaning and application, the Supreme Court had a crucial role. The Court made a crucial decision in 1922, determining that compensation must be provided when a government regulation goes “too far” in diminishing the value of a property (Nedzel, Black, 2007: 143). Before this decision, the understanding of the Taking clause was such that compensation was required only when the government *physically* took away the property right as a whole (Treanor, 1995: 782).<sup>12</sup> In the decision, of *Pennsylvania Coal v. Mahon*, the Supreme Court decided that not only does physical taking of property lead to expropriation, i.e. eminent domain, but that even regulations that lead to a significant change in the value of the property can also be considered enough to constitute expropriation. In the opinion of this decision, the wording used to decide if the Eminent Domain rules should apply is if the government regulation “goes too far” in diminishing the value of the property, with no further criteria or explanation as to what would be considered as “going too far” (Treanor, 1995: 782). Although this decision did not provide a precise guideline on what should be considered as a government act that could be defined as the taking of land, it made a huge improvement compared to the original meaning of the words that are found

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11. An important U.S. Supreme Court decision considering the shaping of basic principles of Eminent Domain is *Kohl v. United States*, 91 U.S. 367 (1875). In this decision, the Court concluded that “the right of eminent domain exists in the government of the United States, and may be exercised by it within the states, so far as it is necessary to the enjoyment of the powers conferred upon it by the Constitution”. This decision basically can be used as the basis for Eminent Domain which allows the states to fulfil its interests by taking a property while paying just compensation.

12. As one more example of the stance that was taken in that period by the Court, we can use the United States Supreme Court decision in *Smith v. Corporation of Washington*, 61. U.S. 135 (1857) in which it was decided that the mere fact that a changed plan of the city made by the Corporation of Washington based on the power given to it by Congress, resulted in the fact that an individual property suffered inconvenience or is put to expense does not result in a fact that the company is liable in damages. In the described decision, the plaintiff suffered damages that were a result of a decision to complete and extend the grading of the streets which consequently lowered the value of their property and made them build a new entry.

in the Fifth Amendment, which had previously seen only physical taking as a prerequisite for the application of expropriation rules.

In this case, the plaintiff, Pennsylvania Coal Co. sought out legal protection from the Supreme Court related to the decision of a lower court which had granted Mahon, the other party to this case, an injunction against the company. This injunction was granted because the company's mining activity was diminishing the value of Mahon's property. The plaintiff appealed based on their right as understood by the original interpretation of the Takings Clause from the Fifth Amendment. According to this rule of law they did not have an obligation to give any kind of remedy for their actions if there was no physical taking of the land, which was the case in this particular instance since they only threatened the stability of the house and their mining led to possible subsidence.<sup>13</sup>

In explaining their decision, and why the Court considered that the taking does not need to be physical in order for the expropriation rules to be applied, Judge Holmes has written the following: "...limitation must have its limits, or the contract and due process are gone. One factor for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not all cases there must be an exercise of eminent domain and compensation to sustain the act." As can be seen from the wording of the decision, the Supreme Court of the United States of America changed its existing practice regarding expropriation. More precisely, it changed its understanding as to what will constitute expropriation, ruling that not only physical taking is to be considered a reason for expropriation rules to be applied, but also different limitations that lead to a diminished value of the property. We believe that this decision made a positive impact on the overall position of petitioners and their access to justice when it comes to the issues in question.

### 3.2 Kelo v. City of New London

A discussion about eminent domain in the practice of the Supreme Court of the United States would not be complete without referring to the case of Kelo v. City of New London.<sup>14</sup> This case revolved around the main problem of defining *public interest*. As was stated at the beginning of this paper, the taking or limiting of the property must be done in order to achieve an interest, a purpose, that is relevant to the public. In this case, we will see how the U.S. Supreme Court set a precedent as to how to understand and define public interest.

The City of New London acquired land as a consequence of an integrated plan that had a goal to influence and improve the quality and economy of the city. The City enacted the plan through a private non-profit entity established to assist the City in planning economic development. The City, through the private non-profit, bought most of the land at a certain place from buyers who willingly sold their property, however, when it came to the rest of the owners, some of them refused and the City initiated a

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13. *Pennsylvania Coal Co. v. Mahon*, of 11/12/1922, 260 U.S. 393.

14. *Kelo v. City of New London* of 23/6/2005, 545 U.S. 469.

condemnation process against them and wanted to use its eminent domain powers to transfer the property to the mentioned private non-profit that was made for this exact purpose. Also, it was planned for the land in question to be used by a company that would benefit the overall economic position of the city. As a result, the owners who refused to sell their land, argued that eminent domain cannot be used in this case because there is no public use considering their land is to be transferred to another private entity and that there will be a benefit on the side of a “particular class of identifiable individuals”. One of the people who refused to sell their property and chose to argue that there is no place for application of the eminent domain rule here is the petitioner Susette Kelo. When this case reached the U.S. Supreme Court, it made a decision from which four of the judges of the U.S. Supreme Court dissented.<sup>15</sup> The dissenting opinions will be presented in the following part of this chapter.

The main issue was that the existence of two polar propositions was clear and accepted at the time – a State cannot take property from A for the sole purpose of transferring it to another private party B and on the other hand, it is undisputed that a State can transfer property from one private party to another if there is “public use” purpose of the taking (Singer *et al.*, 2017: 881). Before this case, it was widely understood that the standard of *public use* meant *used by the public*, and that this decision changed this tradition. After this decision, the precedent established that public purpose can be understood to include “economic development”. Therefore, property could be potentially transferred to a private entity if it brings “economic development” which is a very wide standard. By doing so, the court widened the range of situations in which eminent domain could be applied. Furthermore, they did not state how the local government’s activities in forming an economic development plan should be reviewed and therefore, a better more articulated standard for reviewing this question relevant to the application of eminent domain should have been provided (Woodyard, Boggs, 2009: 439). To conclude, the reasoning of the decision in *Kelo v. City of New London* made a drastic change in understanding private interest as a requirement for the legal application of eminent domain. This decision was met with negative reactions from the public and the media with even the United States House of Representatives and the Senate voting and passing a resolution titled “Expressing the Grave Disapproval of the House of Representatives regarding the Majority Opinion of the Supreme Court in the case of *Kelo v. City of New London*” (Woodyard, Boggs, 2009: 440-442).<sup>16</sup> This decision made a crack that would allow different situations to fall under

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15. Justice Sandra Day O’Connor, The Chief Justice, Justice Scalia, and Justice Thomas wrote one dissent to this decision. They emphasized that with this decision, the Court “abandons this long-held, basic limitation on government power”. They also stated that “the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings ‘for public use’ is to wash out any distinction between private and public use of property – and thereby effectively to delete the words “for public use” from the Taking Clause of the Fifth Amendment”. The fourth judge to dissent from the decision was Justice Clarence Thomas who wrote a dissent on his own claiming different reasons for his dissent from his colleagues.

16. Resolution Expressing the Grave Disapproval of the House of Representatives regarding the Majority Opinion of the Supreme Court in the case *Kelo v. City of New London* of 29/6/2005.

the “economic development” requirement that this decision set forward. Rather than having a more or less narrow area of situations that could lead to the application of eminent domain, with this new standard and no strict rules or guidelines to help understand it, eminent domain could now be applicable to more situations, leading to more uncertainty than before.<sup>17</sup> In general, it is considered that the urban renewal program in different states played a critical role in the demise of the public use clause (Prittchet, 2003: 2).<sup>18</sup>

### 3.3 Penn Central Transportation Co. v. New York City

This case represents, in the same way as the cases analysed in the previous part of the article, a monumental decision made by the U.S. Supreme Court regarding eminent domain. In this situation, the relevant question that the court had to decide on is whether the city may, as a part of a program that is set up upfront to preserve historic landmarks, place restrictions on the development of individual historic landmarks, but without activating the taking requirement of the eminent domain and without requiring the city to pay just compensation that is, in that case, due (Singer *et al.*, 2017: 908).

In this case, the company Grand Central Transportation which was the owner of the structure in the city of New York, the famous and historically protected as a landmark, Grand Central Station building, sued the City of New York. They claimed that the fact that they were denied the opportunity to build a skyscraper, above the building of the Grand Central Station, while not changing the exterior of the Station itself, due to the regulations that the city imposed regarding the protection of the landmark buildings, actually resulted in the application of the taking clause from the Fifth Amendment and that they were, therefore, due just compensation and that they were also arbitrarily deprived of their property without due process of law which results in a violation of the Fourteenth Amendment.<sup>19</sup> In this case, the Court decided that there is no just compensation due, and that, therefore, there is no eminent domain (taking) applied here.

In the reasoning for this decision, the Court implemented the foundation of the *Ad hoc* test that is to be applied in cases of eminent domain. Specifically, the court stated “In engaging in these essentially *ad hoc*, factual inquiries, the Court’s decisions have identified several factors that have particular

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17. However, we consider it important to point out that the “erosion” of the requirement of the public interest requirement started long before the decision in *Kelo v. City of New London*, so this decision represents a culmination of the apparent stance that the Supreme Court of the United States took at the time regarding the public interest requirement in eminent domain. See more: Orme, 2005: 276-279.

18. This stance can also be confirmed in the decision of the U.S. Supreme Court in *Berman v. Parker* of 22/11/1954, 348 U.S. 26 (1954) where the Court concluded that the power of eminent domain can be used to fulfill a comprehensive plan prepared by an administrative agency for the redevelopment of a large area, even though such property may later be sold or leased to other private interests subject to conditions designed to accomplish these purposes. As we can see, the Court allows for a potential transfer of property from one private entity to another if it serves a function that is set by the state. The Court claims that by doing so, the public use requirement is met.

19. *Penn Central Transportation Co. v. New York City* of 26/6/1978, 438 U.S. 104.

significance. The economic impact of the regulation on the claimant, and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course relevant considerations". Therefore, the Court emphasized the economic impact on the claimant as one parameter and the interference with investment-backed expectations as values that need to be considered to see if there is a basis for eminent domain rules to apply. As there was no interference with the use of the Station building itself, making the economic argument inapplicable here, the court concluded that there is no taking in this case.<sup>20</sup>

It is said that this decision "liberated historic preservation law from constitutional doubts about whether it served the public interest, was arbitrary or disproportionate, or unduly burdened private property generally" (Bryne, 2021: 422). However, there are opinions that this decision was rendered as such only because it involved the Grand Central Station building and that it was, therefore, a *sui generis* case, tailored to the Grand Central Context (Woolloch, 1978: 684). Nonetheless, this decision represents a precedent that is to be applied and followed as a rule of law in situations that could be similar factually to this one which had its reasoning mainly in the fact that the building in question is the famous Grand Central Station in New York.

### 3.4 Pruneyard Shopping Centre v. Robins

The decision in this case is one regarding the requirement of physical taking. More precisely, about whether every physical activity on private property results in taking as a prerequisite for the application of eminent domain. The same as in previous cases, this decision, although setting a precedent for future decisions, is made in relation to the specific facts of the case which.

In this case, a privately owned shopping centre sued students who used its courtyard to put up a table and distribute pamphlets without previously having an agreement about this with the shopping centre.<sup>21</sup> The main issue in this case was that there was a conflict between students and their right to free speech on one hand and the private property rights of the shopping mall on the other. The owner of the mall claimed that his Fifth Amendment rights were violated because there was a taking by students putting up their table on its property, and he received no compensation. He also claimed that his right guaranteed by the Fourteenth Amendment, the right to due process, was also violated.

The Court decided that there was no violation claimed by the owner of the mall. It claimed that this action of putting up a table and delivering pamphlets by students does not amount to an unconstitutional infringement

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20. The Court also stated that the air above the Station, which is actually the right in question that the Court decides on, considering that the Company wanted to build the skyscraper *above* the building, is not completely prohibited from usage by the Company and that some construction may be possible but not the one initially proposed by the Company. Therefore, there is no taking, and the City of New York does not owe the Company any monetary or other kind of compensation.

21. *Pruneyard Shopping Center v. Robins* of 9/6/1980, 447 U.S. 74.

of the appellant's property rights under the Taking Clause because this action will not unreasonably impair the value or use of the property as a shopping centre which is, in its nature, open to the public at large. The Court also stated that the students in question limited their activity in the common areas of the shopping centre so the fact that they may have "physically invaded" the property is not determinative. Therefore, the Court showed in this decision that not every physical action on someone's property can result in taking. However, the ruling applies to the properties that are open to the public in a way that a shopping centre usually is. The Court emphasized that it took into account that the action was temporary and that there was no economic impairment that could result in eminent domain.

The decision in this case, as understood by scholars and the public, basically affirmed a state's choice to provide its citizens access to privately owned shopping malls for the purpose of exercising free speech and petition rights (McCauley, 1981: 699). There is also a view related to this decision that it concluded that the property rights of the mall's owner were theoretical, at best (McCauley, 1981: 721). In conclusion, we could claim that this decision received negative reactions. Although both rights in question, a right to free speech and a right to private property are both equally important, the Court made the decision to protect one more than the other in this case. As stated already, this decision was made considering specific facts of the case, however, its influence as a precedent is very important, especially when it comes to the justice that a narrow circle of people consisting of owners of shopping malls, would receive in protecting their private property right. Although some distinctions should exist between owners of "regular" private property real estate and owners of shopping malls, we do not believe that this decision should be materialized in a way that it limits their right to be protected against physical takings of such kind without just compensation. In this case, there was no real harm done, however a situation similar to this, where a taking could be more harmful to the property could occur and could be decided based on this set precedent.

#### **4. Conclusion**

This paper aimed to provide insight into some of the most important cases regarding Eminent Domain in the history of the U.S. Supreme Court. It is undisputed that there are many more cases of similar relevance, however, we considered these to be the ones that shaped the institution of eminent domain the most.

Firstly, it is undisputed that all of the decisions made had a great impact, some of them rather positive, others not so much. For example, only after the Supreme Court's decision in *Pennsylvania Coal v. Mahon*, did we have the rule that there is no requirement that only a physical taking can result in a taking and therefore lead to the application of the expropriation rule that will grant the owner of the private property right a just compensation. Although this court decision relates to only two parties, it is undisputed that it had a much wider influence and that it significantly improved the position of petitioners who are considering protecting their right from a taking and their general access to justice. This decision made the range of possible

plaintiffs accessing justice when it comes to this particular right, much wider which is undoubtedly a positive thing.

On the other hand, in *Kelo v. City of New London*, we could conclude that the Court made a decision that negatively impacted the position of potential petitioners considering the fact that it changed the conception of public interest as a requirement for the application of expropriation in a way that it widened it to include more situations that can lead to expropriation. Including the “economic development” as a reason for expropriation without providing further details, definitely leads to less protection than if such a standard was not accepted. The petitioner’s right to access to justice was not impaired by this decision in a direct manner, however, the justice they could receive in court proceedings has been slightly changed. The potential negative impact of this decision was spotted by the public also, as it reacted negatively, as it was presented earlier in the paper.

*Penn Central Transportation Co. v. New York City* was a very public decision regarding a very public building in the City of New York – Grand Central Station. This decision, although it found that protection of buildings that are considered to be historical monuments is important, as it should be, it diminished in a way the private property right of the owner of the building. As a consequence of this decision, the property rights of an owner of a protected monument are much narrower than those of any other private property right. This decision could be considered as a good precedent. However, in our opinion, in this case, access to justice for the owner of the building was limited in this way mainly due to the facts of the case and the fact that the owner was limited to using their property rights above the building without interfering with the building as a protected monument itself. Considering all of the available facts, we do consider this decision to be one with a positive effect.

Finally, *Pruneyard Shopping Centre v. Robins*. We consider that this decision negatively impacted the position of petitioners when it comes to their access to justice in the protection of their property rights. In this decision, the Court decided to limit the right to private property of the owner due to the nature of the object of its right and the nature of the right of the other party in question – the right to free speech. The Court assessed all the rights in question and made a decision. We consider that the fact that the object in question is a shopping mall open to the public and that the other right in question is a right to free speech is not enough to render a decision that will be used as a precedent for different factual cases not completely applicable to the facts of this case.

Finally, it is our conclusion that these cases were decided based on specific facts that surround them. Considering that these decisions are precedents to be used as a guiding rule for numerous future cases, this is not necessarily a good thing. Having in mind the importance of private property and that expropriation is a limitation of this basic human right, it must be used as an exception in order to protect this crucial right and the access to justice.

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